

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JASON BROWN,

Petitioner, No. CIV S-05-0866 FCD EFB P

vs.

DIANA K. BUTLER, Warden,

Respondents. ORDER

_____/

Petitioner is a state prisoner without counsel seeking a writ of habeas corpus. *See* 28 U.S.C. § 2254. On July 10, 2007, the court found that the petition contains both exhausted and unexhausted claims, explained to plaintiff that to proceed on it he must request that the court stay this action and hold it in abeyance, and explained the legal basis for making such a request. On July 25, 2007, petitioner filed a motion for reconsideration by the district judge. The district judge affirmed the order on August 21, 2007.

On August 13, 2007, petitioner requested an extension of time to comply with the July 10 order. *See* Fed. R. Civ. P. 6(b). He asserts that because in its analysis the court cited to Rules 7 and 15 of the Federal Rules of Civil Procedure and Rules 2, 5 and 11 of the Rules Governing Section 2254 Cases, he needs to read these rules. He states that he has not been able to obtain copies of them.

The court relied upon Rule 15 of the Federal Rules of Civil Procedure because petitioner argued in his opposition to the motion to dismiss that this rule precluded an amended petition. Accordingly, petitioner has access to that rule. The citations to the other rules are self-explanatory, and in any event the district judge affirmed the order on reconsideration.

Finally, the court ordered petitioner to file a motion requesting this court to stay this action and hold it in abeyance if he wishes to proceed on the petition in this action. The bases for such a motion were explained. The rules petitioner asserts he must read are not relevant to his compliance with the order, which again, the district judge affirmed. Petitioner's motion for additional time appears disingenuous. Nevertheless, a stay and abeyance appears appropriate here and may serve the interests of justice and judicial economy.

Accordingly, it is ORDERED that petitioner's August 13, 2007, request for an extension of time to file a motion to stay this action and hold it in abeyance is granted. Petitioner has 20 days from the date this order is served, to comply with the July 25, 2007, order. In light of petitioner's dubious argument in support of the instant motion, the court does not intend to grant petitioner additional time. Failure to comply with this order will result in a recommendation that this action be dismissed without prejudice.

Dated: August 22, 2007.

EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE